No. 10-683

IN THE

Supreme Court of the United States

PAUL O. ROHART, M.D.,

Petitioner,

v.

NORTH BROWARD HOSPITAL DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL, FLORIDA

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioner has presented compelling reasons to grant the Petition where the express language of the trial court's order granting summary judgment states that it was based on Florida tort law, not absolute immunity.

II. Whether Petitioner has presented compelling reasons to grant the Petition where Florida law clearly dictates that the risk manager of a hospital has sole authority to conduct an investigation into adverse incidents to patients.

III. Whether Petitioner has presented compelling reasons to grant the Petition where the District, as an interested third party and the source of the business relationship between Petitioner and his employer, cannot be held liable for tortious interference in accordance with Florida law.

IV. Whether Petitioner has presented compelling reasons to grant the Petition where the Florida Supreme Court's dismissal of Rohart's Petition for Writ of Certiorari was based on a lack of discretionary jurisdiction.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, Paul Rohart, M.D., is referred to herein as "Rohart" or "Petitioner."

Respondent, North Broward Hospital District, is a special tax district of the State of Florida, and is referred to herein as "the District" or "Respondent." Pursuant to Supreme Court Rule 29.6, Petitioner states Respondent has no parent company and no publicly held company owns 10% or more of Respondent's stock.

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JURISDICTION

The per curium affirmance rendered by the Fourth District Court of Appeal for the State of Florida for which Petitioner seeks review was limited to a question of state law. This case does not involve a Federal question.

CONSTITUTIONAL PROVISIONS INVOLVED

There are no constitutional provisions involved in this case.

STATEMENT OF THE CASE

Respondent, North Broward Hospital District, is a special taxing district of the State of Florida, and as such, is a constitutionally established local governmental entity charged with the responsibility to provide for the "public health ... and good" of the citizens within the district. *Eldred v. N. Broward Hosp. Dist.*, 498 So. 2d 911, 914 (Fla. 1986). The District operates four public hospitals and in order to staff its emergency rooms, entered into a Management Agreement with Phoenix Emergency Medical of Broward, L.L.C. ("PEMB"). Pursuant to the Management Agreement, PEMB staffed the District's emergency rooms by hiring duly licensed physicians as independent contractors.

PEMB entered into an Independent Contractor Agreement (the "Agreement") with Petitioner, Paul Rohart, M.D. Pursuant to the Agreement, Rohart was to perform professional physician services in the emergency room of Broward General Medical Center, one of the District's hospitals. *Id.* Pursuant to the express terms

of the Agreement, Rohart was at all times acting and practicing medicine as the agent of the District, and the District exercised exclusive control and direction over the method and manner by which Rohart performed his professional physician services.

On or about April 23, 2006, a patient named Michelene Plass visited the emergency room at Broward General. Tragically, Mrs. Plass was mistakenly administered a lethal dosage of medication by a nurse working in the emergency room.[1] In accordance with Florida law, the District reported the incident to the Agency for Health Care Administration, and risk management launched a proper investigation.

Notwithstanding the District's investigation of the incident, Rohart launched his own improper and unauthorized investigation into the death of Mrs. Plass. Rohart was told by his superior, Dr. El Sanadi, an employee of PEMB, to cease his unauthorized investigation into Mrs. Plass's death, or he would be terminated. Rohart ignored Dr. El Sanadi's admonition and continued his investigation.

On August 11, 2006, the District entered into a settlement with Mrs. Plass's husband. On September 15, 2006, Rohart contacted Mrs. Plass's husband to discuss the circumstances of his wife's death. Rohart told Mr. Plass not to sign any settlement papers with the District

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1. Petitioner's assertion that the administration of the lethal dosage of medication was "intentional" has no support in the record and is one of many egregious allegations Petitioner has made during the pendency of this case.

and that he had a lawyer for him. Rohart also asked Mr. Plass if he would speak with Rohart's attorney.

Later that day, Dr. Nabil El Sanadi contacted Broward General Medical Center Risk Manager, Ela Lena, a District employee, and informed her of Rohart's conversation with Mr. Plass. Ela Lena then relayed this information to Joseph Scott, former CEO of Broward General Medical Center. Mr. Scott requested that Dr. Rohart be removed from Broward General Medical Center. PEMB terminated Rohart's services, effective immediately, in accordance with the express terms of the Agreement between Rohart and PEMB.

On November 27, 2006, Rohart filed the instant action against PEMB for wrongful termination; and against the District for tortious interference with a business relationship. On June 17, 2009, the trial court granted the District's Motion for Summary Judgment finding that as a matter of law, "'The tort of willful interference with a business relationship does not exist where the defendant was the source of the business opportunity allegedly interfered with.' *The Genet Company v. Annheuser-Busch, Inc.*, 498 So. 2d 683, 684 (Fla. 3d DCA 1986)." (App. B) On June 24, the trial court entered Final Judgment in favor of the District. *Id.*

Rohart appealed the trial court's decision to the Fourth District Court of Appeal for the State of Florida. The Fourth District affirmed the trial court's decision without opinion, citing as support of its affirmance *Palm Beach Cnty. Health Care Dist. v. Prof'l Med. Educ., Inc.*, 13 So.3d 1090 (Fla. 4th DCA 2009) and *Fla. Tel. Corp. v. Essig*, 468 So.2d 543 (Fla. 5th DCA 1985), two cases relied

upon by the District. (App. A) Rohart thereafter moved for rehearing in the Fourth District Court of Appeal, which was denied. (App. C) Rohart then filed a Petition for Writ of Certiorari with the Florida Supreme Court. Because the Florida Supreme Court lacked discretionary jurisdiction, Rohart's Petition was dismissed. (App. D)

SUMMARY OF ARGUMENT

Petitioner has failed to present a "compelling reason" for his Petition for Writ of Certiorari ("Petition") to be granted. Specifically, Petitioner has failed to demonstrate that the District was granted absolute immunity on his claim for tortious interference with a business relationship. Moreover, Petitioner has failed to demonstrate that the District was not the source of the business relationship. Thus, the trial court and Fourth District Court of Appeal properly found that the District could not be held liable for tortious interference in accordance with Florida law.

Petitioner has further failed to demonstrate that Florida law and public policy compelled him to launch his own personal and unauthorized investigation into an adverse incident that occurred at one of the District's hospitals. Moreover, this issue is wholly irrelevant to Petitioners claim against the District for tortious interference.

Petitioner has also failed to demonstrate that the Florida Supreme Court's dismissal of his Petition for Review constitutes a denial of due process and equal protection under the Florida and/or United States Constitutions. Because discretionary jurisdiction was nonexistent, the Florida Supreme Court properly dismissed his Petition.

Because Petitioner has failed to demonstrate that there are any compelling reasons for this Court to grant the Petition, the Petition should be denied.

REASONS FOR DENYING THE PETITION

A petition for a wit of certiorari will be granted only for "compelling reasons." Sup. Ct. R. 10. The decision of the Fourth District Court of Appeal did not decide an important question of federal law that has not been, but should be, decided by this Court. Nor did it decide an important federal question that conflicts with relevant decisions of this Court. To the contrary, the decision of the Fourth District Court of Appeal was based on established Florida tort law. Because Petitioner has not carried his burden of demonstrating any "compelling reasons" for the Petition to be granted, the Petition should be denied.

I. THE FOURTH DISTRICT COURT OF APPEAL FOLLOWED FLORIDA LAW IN AFFRIMING THE TRIAL COURT'S SUMMARY JUDGMENT.

In Point One of his Petition, Rohart attempts to inject the issue of sovereign immunity into this case by disingenuously asserting that Florida's Fourth District Court of Appeal granted the District "absolute immunity" for tortiously interfering in Rohart's business relationship with his employer. [Petition, p. 8] Rohart's conclusion is wholly erroneous as the Hospital District was ***not*** granted absolute immunity, and the Fourth District Court of Appeal did not affirm the trial court's summary judgment based on sovereign immunity. Rather, the Fourth District and the trial court's decisions were based on established Florida tort law.

In granting summary judgment, the trial court expressly held that the Hospital District, as the source of the business relationship between Rohart and PEMB, could not be held liable for tortious interference in accordance with Florida law. Rohart appealed the trial court's summary judgment to the Fourth District Court of Appeal, who in turn affirmed the summary judgment citing two Florida cases that discuss in detail the tort of tortious interference with a business relationship. The first case cited by the Fourth District Court is a case styled *Palm Beach County Health Care Dist. v. Professional Medical Educ., Inc.*, 13 So.3d 1090 (Fla. 4th DCA 2009). Rohart erroneously contends that the court in *Palm Beach* granted the health care district "absolute immunity." Contrary to Rohart's assertion, the court held that, as an interested third party to the relationship, the health care district could not be held liable for tortious interference.[2]

In so holding, the court recognized that "[f]or the interference to be unjustified, the interfering defendant must be a third party, a stranger to the business relationship." *Id.* The court further recognized that a defendant is not a "stranger" to a business relationship if the defendant "***has any beneficial or economic interest in, or control over, that relationship.***" *Id.* [emphasis supplied] The court concluded that because the health care district was not a stranger to relationship, plaintiff's claim for tortious interference "fails because [the] 'interfering'

2. Although the court did hold that that an employee of the health care district was entitled to absolute immunity on the plaintiff's ***defamation*** claim, that portion of the court's holding is wholly irrelevant to the case at bar as there is no defamation claim and no District employee named in the action.

conduct was not unjustified, a required element of the tort."

Like the health care district in *Palm Beach*, in the instant action, the District was not a stranger to the business relationship between Rohart and PEMB. Pursuant to Section 1.2 of the Agreement between Rohart and PEMB, the District exercised "exclusive control or direction over the method and manner by which Physician [Dr. Rohart] performs professional service to the extent permitted by law." Thus, the District had a supervisory interest in how the relationship between PEMB and Rohart was conducted.

Moreover, the District had a financial interest in how the contract was performed. The Agreement called for Rohart to perform emergency medical services in the District's emergency room at Broward General Medical Center. Pursuant to the Agreement, payment for those services was made by PEMB "on behalf of the Operator [the District]." Pursuant to the agreement, Rohart was "at all times [] acting and practicing medicine as the agent of the [District]." The District had both a supervisory interest in how the relationship was conducted and a financial interest in how the contract was performed. Thus, the District cannot be held liable for tortious interference.

In affirming the trial court's summary judgment, the Fourth District also cited a case styled *Florida Telephone Corp. v. Essig*, 468 So.2d 543 (Fla. 5th DCA 1985). In *Essig*, Florida Telephone Corporation (FTC) hired H.L. Edwards Corporation (Edwards), as general contractor, to splice telephone cable. Edwards subcontracted the

cable splicing jobs to various independent cable splicers. The Essigs were independent splicers who subcontracted with Edwards to work on FTC jobs.

The contract between FTC and Edwards expressly stated,

> **The Telephone Company reserves the right to request the Contractor to promptly remove from the job any employee(s) of the Contractor or its sub-contractors who, in the sole opinion of the Telephone Company, is not doing an adequate job or is conducting himself in a manner as to reflect unfavorably upon the Telephone Company, and the Contractor agrees to comply with such requests.**

The Essigs brought suit against FTC for tortious interference with a business relationship. The court found that the Essigs failed to establish that FTC's actions were not privileged. Specifically, the court held that because "FTC expressly reserved the right to remove the Essigs, or any cable splicer, from FTC jobs; it was therefore privileged to interfere with their relationship with the H.L. Edwards Corporation, regardless of motive."

In the instant case, Rohart was hired by PEMB to work in the District's emergency room at Broward General Medical Center. As in *Essig*, the contract between Rohart and PEMB expressly reserved the District's right to request the termination of Rohart. Specifically, Section 6.2 of the Agreement provides:

> **This Agreement may be terminated at any time:**
>
> **(b) by the Company [PEMB] if it is notified by a responsible official of the Operator [the District] that the transfer or termination of the Physician [Rohart] is desired...the Company shall have the right to immediately terminate this Agreement and notify Physician that no further services are to be provided by Physician at Hospital and neither Company nor Operator shall have any further financial obligation to Physician as a result of such termination of services.**

(A.1, Tab A, p. 8) Thus, the District was privileged to interfere with the relationship between Rohart and PEMB. As recognized by the trial court and the appellate court, pursuant to Florida law a claim for tortious interference against the District simply cannot lie.

Rohart's assertion that the District's privilege to interfere "does not encompass the purposeful causing of a breach of contract" ignores the express language of the contract. (Petition, p. 12) To support his flawed assertion, Rohart relies on case law standing for the proposition that the privilege to interfere enjoyed by a party that is integral to the business relationship is not absolute. Rohart's reliance on these cases, however, is misplaced. Specifically, Rohart relies on *Morsani v. Major League Baseball*, 663 So.2d 653 (Fla. 2d DCA 1995). Procedurally, *Morsani* is distinguishable from the instant action as that case was decided at the motion to dismiss stage, and the case at bar was decided on summary judgment. In

Morsani, the trial court dismissed plaintiffs' complaint for tortious interference. The trial court found that, pursuant to plaintiffs' allegations, defendants had approval rights, and therefore, were the source of the business relationship. Thus, plaintiffs failed to state a cause of action for tortious interference. The Second District reversed, acknowledging that the privilege to interfere in a contract because of a financial interest is not unlimited, and thus, where there is a qualified privilege to interfere with a business relationship, the privilege carries with it the obligation to employ means that are not improper. Because plaintiffs alleged that defendants engaged in threats, intimidation and conspiratorial conduct, and because the trial court was required to take all well pled allegations as true, the court concluded that plaintiffs properly *stated a cause of action* for tortious interference. The instant action, however, was decided at the summary judgment stage. The trial court expressly found that Rohart "failed to come forth with any evidence...that [the District's] actions exceeded the scope of its privilege to protect its own business interests[.]" (App. B) The record was totally devoid of any evidence that the District employed means that were not proper. Thus, summary judgment was warranted.

Rohart also relies on *Burger King v. Ashland Equities, Inc.*, 161 F.Supp.2d 1331 (S.D. Fla. 2001). Like *Morsani*, *Burger King* was decided at the motion to dismiss stage, and because the plaintiff had made allegations of bad faith and improper motive, the district court for the Southern District of Florida held that the plaintiff stated a cause of action for tortious interference despite the fact that defendant had a limited privilege to interfere. Because *Morsani* and *Burger King* were decided at the dismissal stage, they have no bearing on the instant action and Rohart's reliance on them is misplaced.

The District was properly granted summary judgment in accordance with Florida tort law. Rohart's fallacious assertion that the District was granted "absolute immunity" is contradicted by the clear record in this case. Rohart's Petition should be denied.

II. PETITIONER WAS NOT REQUIRED BY LAW OR PUBLIC POLICY TO INVESTIGATE THE DEATH OF MRS. PLASS.

In Point Two of his Petition, Rohart erroneously asserts that §456.0575, Fla. Stat. (2009) and public policy required him to conduct an investigation into Mrs. Plass's death. First and foremost, this issue is wholly irrelevant to Rohart's claim against the District for tortious interference. Second, Rohart's assertion runs afoul of Florida law. In Florida, every licensed facility is statutorily required to establish an internal risk management program that includes provisions for the investigation and analysis of adverse incidents to patients. § 395.0197, Fla. Stat. (2009). The internal risk management program is the responsibility of the governing board of the health care facility. *Id.* Each licensed facility must hire a risk manager who is responsible for implementation and oversight of the facility's internal risk management program required by § 395.0197. *Id.* It is the risk manager's responsibility to conduct any investigation into adverse medical incidents. *Id.*

After the tragic death of Michelene Plass, the District's risk manager launched a proper investigation in accordance with Florida law. Rohart was acting contrary to Florida law when he launched his own personal investigation.

Rohart's reliance on §456.0575, Fla. Stat. (2009) to support his erroneous assertion that he was obligated to conduct his own private investigation is wholly misplaced. Section 456.0575 simply requires health care practitioners to ***inform*** the patient, or a proxy, about adverse incidents. Section 456.0575 cannot be interpreted to sanction a physician's personal investigation into an adverse incident. Rohart's contention that he was acting in accordance with § 456.0575 when he contacted Mrs. Plass's husband on September 16, 2006, nearly five months after her death, is simply disingenuous. Rohart's Petition should be denied.

III. AS AN INTERESTED THIRD PARTY TO THE BUSINESS RELATIONSHIP BETWEEN ROHART AND PEMB AND THE SOURCE OF THE BUSINESS OPPORTUNITY, THE DISTRICT CANNOT BE HELD LIABLE FOR TORTIOUS INTERFERENCE.

In Point Three, Rohart poses the question, "who is the source of the business relationship with which the Respondent interfered?" (Petition, p. 15) A Florida case styled *The Genet Co. v. Annheuser-Busch, Inc.*, 498 So.2d 683 (Fla. 3d DCA 1986) answers Rohart's question and clearly demonstrates that the District was in fact the source of the business relationship between Rohart and PEMB. In *Genet*, the plaintiffs contracted with a beer wholesaler to purchase the wholesalership. The wholesaler's agreement with Annheuser-Busch required Annheuser's approval for a transfer of the business. Annheuser did not approve the transfer and plaintiff sued for interfering with their contract with the wholesalership. The appellate court affirmed a summary judgment for Annheuser, holding that it was a "party to

the business relationship allegedly interfered with" and Annheuser's contractual right "to approve or disapprove any proposed transfer" rendered it an interested third party to the plaintiffs' agreement. *Id.* at 684. The court further found that, "what the Genets sought, through their agreement with Lopez, was to obtain an Annheuser-Busch wholesalership and enter into an Equity Agreement with Annheuser-Busch. Thus, Annheuser-Busch was the source of the business opportunity which plaintiffs sought." Summary judgment was therefore affirmed because the tort of willful interference with a business relationship does not exist where the defendant was the source of the business opportunity allegedly interfered with.

As in *Genet*, the District was not a stranger to PEMB's business relationship with Rohart. Pursuant to the Agreement between Rohart and PEMB, the District was an interested third party to the contract. What Rohart sought was the opportunity to work in the emergency room at one of the District's hospitals. Thus, the District was indeed the source of the business opportunity which Rohart sought, and as such, cannot be held liable for tortious interference.

In Point Three Rohart also contends that that the District could not be the 'source of the business relationship' between Rohart and PEMB because the District did not have the power to hire or fire him. (Petition, pp. 15, 16) Rohart's contention is negated by the express terms of the contract between Rohart and PEMB, which provided that the District had the authority to request the removal of Rohart from its emergency room. Notwithstanding his failure to acknowledge the express

terms of the Agreement, Rohart relies on *Albritton v. Gandy*, 531 So. 2d 381 (Fla. 1st DCA 1988) to support his flawed assertion. Rohart's reliance is misplaced.

In *Albritton*, the court held that although the defendant was a county commissioner for Escambia County, that fact did not make him a party to plaintiff's employment relationship with the county. In so holding, the court focused on the fact that county commissioners did not have the authority to hire and fire employees on behalf of the county as that was the responsibility of the county administrator. The court therefore concluded that Albritton, as a county commissioner, was not a party to the employment relationship between plaintiff and the county. Thus, a claim for tortious interference could be filed against him. *Id.* at 388. Because the District did have the power to request Rohart's termination, *Albritton* is not instructional in the instant matter. Rohart's Petition should be denied.

IV. THE FOURTH DISTRICT'S PER CURIUM AFFIRMANCE DOES NOT CONSTITUTE A DENIAL OF DUE PROCESS OR EQUAL PROTECTON OF THE LAW.

In Point Four of his Petition, Rohart asserts that the Fourth District Court of Appeal "blocked further review of its decision by issuing a decision without an opinion." (Petition, p. 17) Rohart further asserts that the use of per curium affirmances by Florida appellate courts denies the citizenry of Florida constitutional and statutory rights. Rohart's assertions are in direct conflict with Florida law. The respective District Courts of Appeal in the State of Florida are courts of final appellate jurisdiction except

for a narrow classification of cases made reviewable by the Supreme Court. *Taylor v. Knight*, 234 So.2d 156 (Fla. 1st DCA 1970); *Greyhound Lines, Inc. v. Cory*, 279 So. 2d 104 (Fla. 4th DCA 1973). Appellants are not entitled as a matter of constitutional right to a written opinion from the appellate courts. *Taylor, supra.* As stated by the Second District Court of Appeal in *Taylor*:

> **[The district courts] were not established by the people of Florida as intermediate appellate courts or 'way stations' to the Supreme Court of Florida...This Court and not the attorney for the losing party is charged with the responsibility of deciding which cases merit and warrant a full written opinion upon the basis of that opinion's contribution to the jurisprudence of this State and those cases of great public interest...Appellants are not entitled as a matter of constitutional right to a written opinion from this Court in order that they might petition for writ of certiorari.**

Thus, the Fourth District's failure to issue an opinion and the ensuing dismissal of his Petition by the Florida Supreme Court does not constitute a denial of due process or equal protection.

Rohart's assertions also demonstrate his failure to grasp the nature of discretionary jurisdiction in the Florida Supreme Court. Rule 9.030 of the Florida Rules of Appellate Procedure provides that the discretionary jurisdiction of the supreme court may be sought to review decisions of district courts of appeal that:

> **(i) expressly declare valid a state statute; (ii) expressly construe a provision of the state or federal constitution; (iii) expressly affect a class of constitutional or state officers; (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law; (v) pass upon a question certified to be of great public importance; (vi) are certified to be in direct conflict with decisions of other district courts of appeal.**

The Fourth District Court of Appeal's decision did not fall into any of the categories enumerated in the Rule, and thus, did not invoke the discretionary jurisdiction of the Florida Supreme court.

Rohart, however, contends that the cases cited in the Fourth District's decision "expressly and directly conflicts with a decision of another district court of appeal or the supreme court on the same question of law." Rohart, however, is in error. First, Rohart's contention is based on a flawed interpretation of the cases cited in the Fourth District Court of Appeal's decision. Contrary to Rohart's contention, *Palm Beach County Health Care District, supra*, one of the cases cited in the Fourth District's decision, ***did not*** grant the health care district absolute immunity on the plaintiff's tortious interference claim, as is made evident by a brief perusal of the case. In the instant action, it is clear beyond doubt that the District was not granted absolute immunity. The trial court expressly stated that summary judgment was based on the fact that the District was the source of the business relationship, an as such, cannot be held liable for tortious interference

in accordance with Florida law. Rohart's assertions to the contrary are disingenuous and must be disregarded.

Second, even assuming *arguendo* that the cases cited in the Fourth District's decision did actually conflict with other district court cases, discretionary review would not be possible because the Fourth District's decision did not address a question of law within the four corners of the opinion. In *Persaud v. State*, 838 So. 2d 529, 532-33 (Fla. 2003), the Florida Supreme Court explained that its discretionary review jurisdiction can be invoked only from a district court decision "that expressly addresses a question of law within the four corners of the opinion itself" by "contain[ing] a statement or citation effectively establishing a point of law upon which the decision rests." *Id., citing, Florida Star v. B.J.F.*, 530 So.2d 286, 288 (Fla. 1988). This is because "there can be no actual conflict discernible in an opinion containing only a citation to other case law unless one of the cases cited as controlling authority is pending before the Florida Supreme Court, or has been reversed on appeal or review, or receded from by the supreme court, or unless the citation explicitly notes a contrary holding of another district court or of the Florida Supreme Court." *Florida Star*, at 288 n. 3. In those cases where the district court has not explicitly identified a conflicting decision, it is necessary for the district court to have included some facts in its decision so that the question of law addressed by the district court in its decision can be discerned by the Florida Supreme Court. *See Reaves v. State*, 485 So.2d 829, 830 (Fla.1986) (noting that "[c]onflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision").

The Fourth District's decision did not effectively establish a point of law upon which its decision rested. Thus, the Florida Supreme Court would not have been able to discern a conflict between the Fourth District's decision or the cases cited therein, with that of another district court or the Florida Supreme Court even if one had existed.

Rohart further contends that the Fourth District "refused to issue an opinion when requested, as allowed by the Rules of Appellate Procedure." (Petition, p. 17) The Rule to which Rohart is referring provides that "[w]hen a decision is entered without opinion, and a party believes that a written opinion would provide ***a legitimate basis for supreme court review***, the motion [for rehearing] ***may*** include a request that the court issue a written opinion." Rule 9.330, Fla.R.App.P. [emphasis supplied] As previously demonstrated, there is nothing in Florida law that requires the District Court to comply with a litigant's request for an opinion. Moreover, because no conflict was present in this case, Rohart had no basis for Florida Supreme Court review. Thus, an opinion would have been futile. Rohart's assertion that the Fourth District's failure to comply with his request for an opinion constitutes a denial of due process and equal protection is wholly without merit.

CONCLUSION

Petitioner has failed to establish a compelling reason for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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